

The Texas Education Agency (TEA) proposes an amendment to §97.1005, concerning performance-based monitoring analysis system. The proposed amendment would adopt into rule the 2019 Results Driven Accountability (RDA) Manual, which would replace the 2018 Performance-Based Monitoring Analysis System (PBMAS) Manual; provide clarifications to existing statutory provisions; and reflect the recodification of Texas Education Code (TEC), Chapter 39A. The proposed amendment to 19 TAC §97.1005 would also change the section title to Results Driven Accountability.

BACKGROUND INFORMATION AND JUSTIFICATION: To meet the requirements of House Bill (HB) 3459, 78th Texas Legislature, 2003, limiting and redirecting monitoring, the TEA developed the PBMAS and adopted specific criteria and calculations for monitoring performance and program effectiveness in annual PBMAS manuals. Each year since 2005, the annual PBMAS Manual was adopted in rule and used in conjunction with other evaluation systems to monitor performance and program effectiveness of special programs in school districts and charter schools.

The proposed amendment to 19 TAC §97.1005 would remove from rule the 2018 PBMAS Manual and adopt into rule the new 2019 RDA Manual as Figure: 19 TAC §97.1005(b). The PBMAS Manual has been renamed the RDA Manual in order to align with the Office of Special Education Program (OSEP) framework. The 2019 RDA Manual includes several key changes from the PBMAS Manual used for the 2018 system. Many of these changes are marked in the manual as "New!" for easy reference. Detailed information about specific indicators is included in Section III of the proposed new RDA Manual.

General differences in the proposed new RDA Manual include changing reference from PBMAS to RDA and updating the current year from 2018 to 2019 throughout the manual. Following is a description of substantive changes made in each section of the manual.

Section I: Introduction

The Introduction section summarizes the substantive changes from the 2018 Introduction.

Guiding Principles of the PBMAS have been updated to align with the federal principles of RDA.

The section also describes the transition to RDA in 2019 from the 2018 PBMAS, as follows.

Bilingual Education and English as a Second Language (BE/ESL)

For 2019, the following language was added to the BE/ESL Indicators #1 (i-v), #2 (i-v), and #5 (i-v): English learners (ELs) in their first year in U.S. schools are excluded from these indicators unless they were administered STAAR® Alternate 2. This exclusion allows local education agencies (LEAs) at least one full year of instruction before the indicator will apply. BE/ESL Indicator 3 (i-v) is report-only. As a report-only indicator, it can be used for LEA information and planning purposes only. BE/ESL Indicator #4 (i-v) now includes ELs classified in Texas Student Data System (TSDS) Public Education Information Management System (PEIMS) in their first, second, third, and fourth year of monitoring as allowed by Every Student Succeeds Act (ESSA) (M1-M4 students). BE/ESL Indicator #8, and BE/ESL Indicator #9 are no longer report-only.

Career and Technical Education (CTE)

For the 2019 RDA Manual, CTE Indicator #7 (CTE Nontraditional Course Completion Rate - Males) and CTE Indicator #8 (Nontraditional Course Completion Rate - Females) have been removed because LEAs cannot control the gender of students taking elective courses. The following language was added to CTE Indicator #2 (i-iv): English learners (ELs) in their first year in U.S. schools are excluded from these indicators, unless they were administered STAAR Alternate 2.

Every Student Succeeds Act (ESSA)

For the 2019 RDA Manual, ESSA Indicators #9-#20 have been added to collect data for students identified as Foster Care, Homeless, and Military. The new indicators are report-only for those populations of students on the STAAR®

3-8, STAAR® EOC, Annual Dropout, and Graduation performance. Therefore, no performance level will be assigned for ESSA Indicators #9-#20.

Special Education (SPED)

In 2019, the only new indicator is SPED Indicator #5: SPED STAAR® Alternate 2 Overall Participation Rate. Both SPED Indicator #4: SPED STAAR® Alternate Participation and SPED STAAR® Alternate 2 Overall will be report-only indicators. No performance level will be assigned for either indicator. Performance levels for significant disproportionality SPED Indicators #9-#16 will be assigned using significant disproportionality (SD) (Year 1), SD (Year 2), SD (Year 3), or SD (RP) for any racial/ethnic group if the racial/ethnic group's risk ratio exceeds 2.5. As required by federal regulations under 34 CFR Part 300, each LEA's indicator for SD will be based on disaggregated data by the following racial and ethnic groups: (1) Hispanic/Latino; (2) American Indian or Alaska Native; (3) Asian; (4) Black or African American; (5) Native Hawaiian or Other Pacific Islander; (6) White; and (7) Two or More Races. Reasonable Progress will also be applied to determine SD.

SPED Indicators have been moved from Section I to the introduction of the SPED Indicators in Section III.

Section II: Components of the 2019 RDA

The Components of the 2019 RDA section notes substantive changes from the "components for the 2018 PBMAS," as follows.

Changes related to the data sources, accountability subsets, rounding, masking, performance levels (PLs), changes to cut points, minimum size requirement (MSR), and special analysis (SA) were made to remove reference to PBMAS. In addition, the term "district" was changed to "LEA" and dates were updated.

The RDA PL Assignment and SA Determination Process flowchart reflects formatting changes. There are no substantive changes to the flowchart.

Changes to Required Improvements (RI), RI calculations, and the "Example of RI Using Indicator #8: Migrant Graduation" are also related to the image and formatting. The example is the same as in 2018.

Reasonable Progress (RP), RP Calculations, and the Proportionate Improvement Calculation have been added to comply with 34 CFR §300.647(d)(2).

The Monitoring Interventions section has been updated to show TEA organizational change from the Office of Academics to the Division of Review and Support. The section was also updated to direct LEAs to join the "To the Administrator Addressed" (TAA) correspondence listserv and to provide a link for LEAs to register for monitoring support.

Section III: Performance Indicators

Bilingual Education/English as a Second Language (BE/ESL)

Indicators #1, #2, and #5 have changed to report-only because the inclusion of English learners in the first year in a U.S. school may have an impact on the data reporting for LEAs. Therefore, the indicator will collect the data this year without assigning a performance level to any LEAs.

Indicator #3 is a report-only indicator because the student population is not receiving services for bilingual education or English as a Second Language due to parent denials.

Indicator #4 shows the change in language from limited English proficient to English learner and reflects updates to the criteria for the calculation for students in Texas Student Data System (TSDS) Public Education Information Management System (PEIMS). The data will not include special analysis and the years of analysis changes to one. However, there is no anticipated impact to LEAs, so the performance level assignments are the same.

No substantive changes are made to BE/ESL Indicator #6 or #7. Only updates to language and dates are noted in the changes.

Indicators #8 and #9 were new last year and will continue as a report-only indicator this year to increase the validity and reliability of the data before assigning a performance level to LEAs.

Career and Technical Education (CTE)

There are no new substantive changes to CTE Indicator #1, #3, #4, #5, or #6.

Indicator #2 has changed to report-only because the inclusion of English learners in the first year in a U.S. school may have an impact on the data reporting for LEAs. Therefore, the indicator will collect the data this year without assigning a performance level to any LEAs.

Indicators #7 and #8 have been deleted from this data collection because it is duplicative of data that is already collected to comply with the federal requirements for Perkins IV and Perkins V.

Every Student Succeeds Act (ESSA)

Indicator #1 will change to report-only because the inclusion of English learners in the first year in a U.S. school may have an impact on the data reporting for LEAs. Therefore, the indicator will collect the data this year without assigning a performance level to any LEAs.

No substantive changes are made for ESSA Indicators #2-#7.

Indicator #8 now has performance levels assigned based on data collections that have been proven valid and reliable based on previous years of data collection.

Indicators #9-#20 have been added to comply with program requirements for special populations that include children who are experiencing homelessness (authorized by Title VII-B of the McKinney-Vento Homeless Assistance Act), children who are in foster care (as authorized by ESEA Section 1111(g)(1)(E) and Section 1112(c)(5)(B)), and military-connected students (TEC, §25.006(c)(1) and (2) and (d)(1) and (3)). Indicators to measure state assessment performance (Grades 3-8 and end-of-course), dropout, and graduation have been added for each vulnerable population of students: ESSA Indicator #9: Foster Care STAAR® 3-8 Passing Rate; ESSA Indicator #10: Foster Care STAAR® EOC Passing Rate; ESSA Indicator #11: Foster Care Annual Dropout Rate (Grades 7-12); ESSA Indicator #12: Foster Care Graduation Rate; ESSA Indicator #13: Homeless STAAR® 3-8 Passing Rate; ESSA Indicator #14: Homeless STAAR® EOC Passing Rate; ESSA Indicator #15: Homeless Annual Dropout Rate; ESSA Indicator #16: Homeless Graduation Rate; ESSA Indicator #17: Military STAAR® 3-8 Passing Rate; ESSA Indicator #18: Military STAAR® EOC Passing Rate; ESSA Indicator #19: Military Annual Dropout Rate; ESSA Indicator #20: Military Graduation Rate.

Special Education (SPED)

Indicator #4 has changed both the calculation and assignment of a performance level to the indicator. The calculation changed the denominator from students served in special education to all students in Grades 3-9 to collect the federally required data for reporting the overall participation of students with disabilities in alternate testing. The assignment of performance levels in 2018 have also been removed and the TEA does not intend to assign performance levels related to this indicator.

Indicator #8 is a report-only indicator because a new instructional setting was added to the calculation. Therefore, the indicator will be report-only to collect new baseline data for 2019.

Indicator #10 will also change to a report-only due to the addition of an instructional setting code in the calculation that may impact LEA determinations. Therefore, the performance level will remain a report-only indicator for this year, but 34 CFR Part 300 requires that Significant Disproportionality will still apply for this year.

Indicators 9-17 have all been updated to show that reasonable progress will apply and that a rating of Significant Disproportionality for a third year may apply (Year 3) or SD(RP).

Indicator #16 added performance level assignments based on valid and reliable data collected in the previous PBMAS.

No substantive changes are made for SPED Indicators #1-#3 and #5-#7.

Section IV: Appendices

No substantive changes are made to this section. All information has been updated with current contact information.

FISCAL IMPACT: Matt Montano, deputy commissioner for special populations, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations as required by federal law, limit some regulations by making some indicators be report-only, and repeal some regulations.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Montano has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that rule language is based on current law and provide school districts with clarifications regarding the use of accountability results to identify areas where performance can be improved. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins August 16, 2019, and ends September 16, 2019. Public hearings to solicit testimony and input on the proposal will be held at 1:00 p.m. on August 28, 2019, and on September 4, 2019, in Room 1-111, William B. Travis Building, 1701 North Congress Avenue,

Austin, Texas 78701. Anyone wishing to testify at one of the hearings must sign in between 12:30 p.m. and 1:00 p.m. on the day of the respective hearing. Each hearing will conclude either once all who have signed in have been given the opportunity to comment or at 3:30 p.m., whichever comes first. Questions about the hearing should be directed to Review and Support at (512) 463-9414. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §7.021(b)(1), which authorizes the TEA to administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs; TEC, §7.028, which authorizes the TEA to monitor as necessary to ensure school district and charter school compliance with federal law and regulations, financial integrity, and data integrity. Section 7.028(a) also authorizes the TEA to monitor special education programs for compliance with state and federal laws. Section 7.028 also authorizes the agency to monitor school district and charter schools through its investigative process; TEC, §12.056, which requires that a campus or program for which a charter is granted under the TEC, Chapter 12, Subchapter C, is subject to any prohibition relating to the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with the TEC, Chapter 12, Subchapter C, as determined by the commissioner; high school graduation under the TEC, §28.025; special education programs under the TEC, Chapter 29, Subchapter A; bilingual education under the TEC, Chapter 29, Subchapter B; and public school accountability under the TEC, Chapter 39, Subchapters B, C, D, F, and J, and Chapter 39A; TEC, §12.104, which states that a charter granted under the TEC, Chapter 12, Subchapter D, is subject to a prohibition, restriction, or requirement, as applicable, imposed by the TEC, Title 2, or a rule adopted under the TEC, Title 2, relating to the PEIMS to the extent necessary to monitor compliance with the TEC, Chapter 12, Subchapter D, as determined by the commissioner; high school graduation requirements under the TEC, §28.025; special education programs under the TEC, Chapter 29, Subchapter A; bilingual education under the TEC, Chapter 29, Subchapter B; discipline management practices or behavior management techniques under the TEC, §37.0021; public school accountability under the TEC, Chapter 39, Subchapters B, C, D, F, G, and J, and Chapter 39A; and intensive programs of instruction under the TEC, §28.0213; TEC, §29.001, which authorizes the TEA to effectively monitor all local educational agencies (LEAs) to ensure that rules relating to the delivery of services to children with disabilities are applied in a consistent and uniform manner, to ensure that LEAs are complying with those rules, and to ensure that specific reports filed by LEAs are accurate and complete; TEC, §29.0011(b), which authorizes the TEA to meet the requirements under (1) 20 U.S.C. Section 1418(d) and its implementing regulations to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the state and in the school districts and open-enrollment charter schools in the state with respect to the: (A) Identification of children as children with disabilities, including the identification of children as children with particular impairments; (B) Placement of children with disabilities in particular educational settings; and (C) Incidence, duration, and type of disciplinary actions taken against children with disabilities including suspensions or expulsions; or (2) 20 U.S.C. Section 1416(a)(3)(C) and its implementing regulations to address in the statewide plan the percentage of schools with disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that result from inappropriate identification; TEC, §29.010(a), which authorizes the TEA to adopt and implement a comprehensive system for monitoring LEA compliance with federal and state laws relating to special education, including ongoing analysis of LEA special education data; TEC, §29.062, which authorizes the TEA to evaluate and monitor the effectiveness of LEA programs and apply sanctions concerning students with limited English proficiency; TEC, §29.066, which authorizes PEIMS reporting requirements for school districts that are required to offer bilingual education or special language programs to include the following information in the district's PEIMS report: (1) demographic information, as determined by the commissioner, on students enrolled in district bilingual education or special language programs; (2) the number and percentage of students enrolled in each instructional model of a bilingual education or special language program offered by the district; and (3) the number and percentage of students identified as students of limited English proficiency who do not receive specialized instruction; TEC, §29.182, which authorizes the State Plan for Career and Technology Education to ensure the state complies with requirements for supplemental federal career and technology funding; TEC, §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which authorizes the commissioner to adopt a set of indicators of the quality of learning and achievement and requires the commissioner to periodically review the indicators for

consideration of appropriate revisions; TEC, §39.054(b-1), which authorizes the TEA to consider the effectiveness of district programs for special populations, including career and technical education programs, when determining accreditation statuses; TEC, §39.0541, which authorizes the commissioner to adopt indicators and standards under the TEC, Chapter 39, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §§39.056, 39.057, and 39.058, which authorize the commissioner to adopt procedures relating to monitoring reviews and special accreditation investigations; TEC, §39A.001, which authorizes the commissioner to take any of the actions authorized by the TEC, Chapter 39A, to the extent the commissioner determines necessary if a school does not satisfy the academic performance standards under the TEC, §39.053 or §39.054, or based upon a special accreditation investigation; TEC, §39A.002, which authorizes the commissioner to take certain actions if a school district becomes subject to commissioner action under the TEC, §39A.001; TEC, §39A.004, which authorizes the commissioner to appoint a board of managers to exercise the powers and duties of a school district's board of trustees if the district is subject to commissioner action under the TEC, §39A.001, and has a current accreditation status of accredited-warned or accredited-probation; or fails to satisfy any standard under the TEC, §39.054(e); or fails to satisfy any financial accountability standard; TEC, §39A.005, which authorizes the commissioner to revoke school accreditation if the district is subject to the TEC, §39A.001, and, for two consecutive school years has received an accreditation status of accredited-warned or accredited-probation, failed to satisfy any standard under the TEC, §39.054(e), or has failed to satisfy a financial performance standard; TEC, §39A.007, which authorizes the commissioner to impose a sanction designed to improve high school completion rates if the district has failed to satisfy any standard under the TEC, §39.054(e), due to high school completion rates; TEC, §39A.051, which authorizes the commissioner to take action based on campus performance that is below any standard under the TEC, §39.054(e); and TEC, §39A.063, which authorizes the commissioner to accept substantially similar intervention measures as required by federal accountability measures in compliance with the TEC, Chapter 39A.

Legislation from the 86th Texas Legislature, 2019, did not impact authority for this rulemaking.

CROSS REFERENCE TO STATUTE. Texas Education Code, §§7.021(b)(1), 7.028, 12.056, 12.104, 29.001, 29.0011(b), 29.010(a), 29.062, 29.066, 29.182, 39.051, 39.052, 39.053, 39.054(b-1), 39.0541, 39.056, 39.057, 39.058, 39A.001, 39A.002, 39A.004, 39A.005, 39A.007, 39A.051, and 39A.063.

<rule>

§97.1005. Results Driven Accountability [Performance-Based Monitoring Analysis System] .

- (a) In accordance with Texas Education Code, §7.028(a), the purpose of the Results Driven Accountability (RDA) [Performance-Based Monitoring Analysis System (PBMA)] is to report annually on the performance of school districts and charter schools in selected program areas: bilingual education/English as a Second Language, career and technical education, special education, and certain Title programs under federal law. The performance of a school district or charter school is reported through indicators of student performance and program effectiveness and corresponding performance levels established by the commissioner of education.
- (b) The assignment of performance levels for school districts and charter schools in the 2019 RDA report [2018 PBMA] is based on specific criteria and calculations, which are described in the 2019 RDA [2018 PBMA] Manual provided in this subsection.
Figure: 19 TAC §97.1005(b) [Figure: 19 TAC §97.1005(b)]
- (c) The specific criteria and calculations used in the RDA framework will be [PBMA are] established annually by the commissioner of education and communicated to all school districts and charter schools.
- (d) The specific criteria and calculations used in the annual RDA [PBMA] manual adopted for prior school years will remain in effect for all purposes, including accountability and performance monitoring, data standards, and audits, with respect to those school years.